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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SILVERIO OCEGUEDA IBARRA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 08-73522

Agency No. A096-072-023

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted January 20, 2009^{**}

Before: O'SCANNLAIN, SILVERMAN and BYBEE, Circuit Judges.

This is a petition for review from the Board of Immigration Appeals'

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

(“BIA”) denial of a motion to reopen and to reconsider the BIA’s December 31, 2007 decision.

We review the BIA’s denial of a motion to reconsider or to reopen for abuse of discretion. *See Perez v. Mukasey*, 516 F.3d 770, 773 (9th Cir. 2008).

Respondent’s motion to dismiss in part this petition for review for lack of jurisdiction is construed as a motion to dismiss in part and for summary disposition in part. Respondent’s motion to dismiss in part is granted. *See* 8 U.S.C. § 1252(a)(2)(B)(i); *Fernandez v. Gonzales*, 439 F.3d 592, 601 (9th Cir. 2006) (concluding that the court lacks jurisdiction to review the BIA’s denial of motion to reopen for failure to establish a prima facie case if a prior adverse discretionary decision was made by the agency).

Respondent’s motion for summary disposition in part is granted because the questions raised by this petition are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam).

Petitioner’s motion to reopen failed to present evidence of changed country conditions in Mexico that are material to petitioner and his circumstances. *See* 8 C.F.R. § 1003.2(c). Because petitioner has failed to meet his burden of

establishing a claim to support reopening, the BIA did not abuse its discretion in denying the motion to reopen.

The BIA also did not abuse its discretion in denying petitioner's motion to reconsider because the motion failed to identify any errors of fact or law in the BIA's December 31, 2007 order. *See* 8 C.F.R. § 1003.2(b)(1); *see also Membrano v. Gonzales*, 425 F.3d 1227, 1230 n.5 (9th Cir. 2005) (en banc).

The motion for stay of voluntary departure, filed after the departure period had expired, is denied. *See Garcia v. Ashcroft*, 368 F.3d 1157 (9th Cir. 2004).

All other pending motions are denied as moot. The temporary stay of removal confirmed by Ninth Circuit General Order 6.4(c) shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DISMISSED in part; DENIED in part.